value of the test it will be accepted by the courts as true. (Matter of Viemeister, supra, and other cases cited above.)

The imposition of this test with respect to this particular occupation, and the requirement of this and any other test in any other occupation which may effect the public health, rests in the sound discretion of the State or local authorities in whom the discretion to pass upon the subject has been vested. It is not an arbitrary or capricious discretion, but one which under the circumstances is reasonable and just. (People ex rel. Lodes *v.* Dept. of Health, 189 N. Y., 187; 82 N. E., 187; 13 L. R. A. (N. S.), 894; People ex rel. Cumisky *v.* Wurster, 14 App. Div., 556; 43 N. Y. Supp., 1088; People ex rel. Dow *v.* Thatcher, 42 Hun, 349; People ex rel. Shelter *v.* Owen, 66 Misc. Rep., 24; 116 N. Y. Supp., 502; People ex rel. Moses *v.* Gaynor, 77 Misc. Rep., 576; 137 N. Y. Supp., 196; 17 L. R. A. (N. S.), note 709.)

This rule does not infringe upon the civil rights of the individual. Government has been instituted among men for their mutual protection, and no man has the right to make himself or his business a menace to the public health. Take away the regulation and control of individual rights, and organized society would break up into its original elements. Under organized society all rights are subject to such reasonable regulations as may be deemed by the governing authority essential to the society, health, peace, good order, and morals of the community. It is a part of the social compact that government shall be maintained for the common good, for the protection and safety of property and the happiness of all the people, and that of any particular individual class, or group of men must give way to the welfare of all. (Jacobson *v.* Massachusetts, supra.)

It is important, therefore, to the whole community, that the supply of milk and cream should be kept clean, pure, and wholesome, and should not be contaminated with impurities, or infected with disease; and it is the duty of the health authorities to see that this is accomplished by the establishment of such reasonable regulations as may be necessary to meet existing conditions or to ward off impending dangers to the public health, and in imposing a blood test as a condition to a license to sell milk and cream in the city, the commissioner of public safety and the health officer acted within the scope of their authority, and applicants for such a license should cooperate with the public authorities, and assist, rather than oppose, reasonable efforts to provide pure and wholesome milk and cream for the people of the city. The requirement of a blood test of an applicant for a license is just a step, and a small one, in the direction of the protection of the public health; but every reasonable effort made in this direction should be encouraged, so long as it does not unreasonably infringe upon the rights of the individual.

The application is denied, with costs.

UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

Opium—Importation—Federal Statute Held to be Valid.

SHEPARD *v.* UNITED STATES. (Oct. 4, 1916.)

The Federal law of January 17, 1914 (38 Stat. L., 275), which prohibits the importation into the United States of opium, except for medicinal purposes, is constitutional.

The Federal law of February 9, 1909, as amended January 17, 1914 (38 Stat. L., 275), contains the following provisions:

That after the 1st day of April, 1909, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof: *Provided*, That opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medicinal purposes only, under regulations which the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law.

SEC. 2. That if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or

preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be fined in any sum not exceeding $5,000 nor less than $50 or by imprisonment for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.

SEC. 3. That on and after July 1, 1913, all smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported after the 1st day of April, 1909, and the burden of proof shall be on the claimant or the accused to rebut such presumption.

F. M. Shepard and A. C. Brown were convicted in a district court of the United States of the crime of conspiracy to import smoking opium into the United States from Mexico in violation of the above act.

Defendant Shepard appealed. In the opinion, Judge Morrow said:

The motion in arrest of judgment is based upon the objection that the last-named act is unconstitutional in so far as it attempts to make penal the keeping and transportation of opium within the limits of a State being in conflict with the police power of the State and not within the powers delegated to the United States. In Brolan *v.* United States (236 U. S., 216, 222; 35 Sup. Ct., 285; 59 L. Ed., 544) this objection to the statute, was held by the Supreme Court to be so utterly devoid of merit as to be frivolous.

The opinion is published in full in 236 Federal Reporter, page 73.